



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	Enrolled	Bill No:	AB 645
Tax:	Property	Author:	Horton
Board Position:	Support - Board Sponsored	Related Bills:	AB 1433 (Horton)

BILL SUMMARY

This Board of Equalization sponsored bill would:

1. Provide all taxpayers with equivalent assessment appeal rights after a property tax audit.
2. Extend the final date to file applications for assessment appeal from September 15 to November 30 if value notices are not sent by August 1.

Assessment Appeal After An Audit

ANALYSIS

Current Law

Revenue and Taxation Code Section 469 requires county assessors to audit, at least once every four years, the books and records of any taxpayer engaged in a profession, trade, or business, if the taxpayer has assessable trade fixtures and business tangible personal property valued at \$400,000 or more. These statutorily required audits are commonly referred to as “mandatory audits.” Additionally, the assessor may audit the books and records of taxpayers with holdings below \$400,000 in value under the authority of Revenue and Taxation Code Section 470. These audits are referred to as “nonmandatory audits.” Generally, assessors perform both mandatory and nonmandatory audits to ensure that the audit program includes a representative sample of all sizes and types of property.

Section 469, in addition to requiring the periodic audit of specified taxpayers, specifies that when a mandatory audit has been conducted and the audit has “disclosed property subject to an escape assessment,” then the original assessment of all the property of the assessee at that location is open to appeal for the year of the escape, except property for which the value has been previously equalized (i.e. a previous assessment appeal on the property was heard and decided). In contrast, when a nonmandatory audit is conducted and an escape assessment is made as a result of the audit, the taxpayer may appeal only the property subject to escape assessment.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

Proposed Law

This bill would amend Section 469 of the Revenue and Taxation Code to provide taxpayers subject to nonmandatory audits the identical assessment appeal rights currently provided to taxpayers after mandatory audits.

In General

Revenue and Taxation Code Section 469 requires that an assessor perform periodic audits (once every four years) of the books and records of any business with taxable personal property and fixtures valued at \$400,000 or more.

Generally, after the assessor audits the taxpayer, there are three possible outcomes:

1. **No Change.** The audit results in “no change” in the original value placed on the property. There are two ways an audit can result in “no change:”
 - a. No changes were discovered.
 - b. Any changes discovered were “netted out,” by overassessments offsetting underassessments. (For efficiency purposes, overassessments can offset underassessments in calculating the amount of taxes due or owing.)
2. **Refunds.** A “net overassessment” is discovered, resulting in a refund of property taxes previously paid.
3. **Escape Assessments.** A “net underassessment” is discovered, resulting in an “escape assessment” and additional taxes due.

Section 469 and Section 1605 specify that, when an audit has been conducted, and the audit “disclosed property subject to an escape assessment,” then all the property of the taxpayer at that location is open to appeal for the year of the escape, except property whose value was determined pursuant to a previous assessment appeal. “All the property,” means all real and personal property.

The phrase “subject to an escape assessment” is without statutory definition. It has been the Board’s longstanding position that the phrase “subject to” gives the assessee the right to appeal, regardless of whether the assessor actually enrolls an escape assessment. In other words, for any year in which the assessor determined that some property was either underassessed or not assessed, the taxpayer is entitled to an appeal hearing on the entire property whether or not a tax bill is ultimately issued. An Attorney General’s opinion, 97-315, concurs with the Board’s interpretation on this matter.

Senate Bill 1752 (Chap. 732, Stats. 1978; Ayala) added the provision that provides when any mandatory audit discloses property subject to an escape assessment, then all the property of the taxpayer at that location is open to appeal for the year of the escape, except property the value of which was determined pursuant to a previous assessment appeal. The Taxation Section of the California State Bar was the sponsor

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of Senate Bill 1752. In an August 31, 1978, letter to then Governor Brown, the State Bar outlined the purpose of their legislation. That letter reads in pertinent part:

“The bill is needed because many taxpayers do not protest assessments when the overall assessment at a business premises seems fair, even though some components are over-assessed and some under-assessed. Then, years later the assessor by reason of audit, proposes an escape assessment for the under-assessed component. Under present law, the taxpayer has no redress for the over-assessment component at the late date of the proposed escape assessment.

The bill has a *de minimis* or no costs to local government and was not opposed by the Legislature. It is particularly important due to the passage of Proposition 13 because assessors now have to review 1975-76 assessments of real property.

In that year (1975-76), many fixtures and heavy machinery were misclassified as personal property, either by the taxpayer or assessor. It did not make a difference in tax then because both real and personal property were taxed at virtually the same rate. Under Proposition 13, real property is to be rolled back to its 1975-76 value. Hence if the assessor in an audit wants to reclassify property assessed as real property in 1975-76 year as being personal property, the taxpayer may need the whole assessment reviewed in order to have fair and equal treatment under the property tax law.”

Background

The staff of the Board of Equalization has been in the process of drafting a proposed regulation, Property Tax Rule 305.3, which would interpret the provisions of Section 469 relating to assessment appeal rights and appeals boards' jurisdiction to equalize the original assessment of all property of the assessee at the location of the profession, trade, or business for the year of the mandatory audit. In preparing a regulation, Board staff first meet with interested parties to discuss issues related to the proposed regulation and reach consensus where possible. When consensus on an issue is not reached, the issue is presented by staff to the Members of the Board of Equalization meeting as the Property Tax Committee for resolution.

On November 1, 2000, the Board of Equalization's Property Tax Committee decided various unresolved issues necessary to provide staff with direction in drafting Rule 305.3. One issue addressed was whether the appeal provisions contained in Section 469 applied only to mandatory audits or all audits. (Issue Paper 00-41) <http://www.boe.ca.gov/proptaxes/ptcmeetings00.htm> The Committee concluded that the appeal provisions contained in Revenue and Taxation Code Section 469 applied only to mandatory audits, but that legislation should be sought to extend the appeal provisions to nonmandatory audits.

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COMMENTS

1. **Purpose.** This provision would eliminate the current disparity in treatment between taxpayers based on whether or not their audit was mandated by law. This bill would guarantee that all taxpayers who are audited by a county assessor, regardless of the value of their assessable trade fixtures and business tangible personal property, would have the same opportunity to file an application for equalization of the original assessment of all property at the location of the business, trade, or profession for the year of the audit when the result of any audit discloses property subject to escape assessment.
2. **Amendments.** The June 20 amendment incorporates amendments to Section 469, which were previously contained in AB 1433 (Horton). The May 17 amendment to AB 1433 redrafts the bill to amend existing Section 469 to accomplish the same purpose rather than moving language from Section 469 into a new section of code and then amending various sections of law to update cross references. This change was made to address concerns expressed by interested parties that it is preferable to amend Section 469 to ensure that there are no unintended consequences of moving the language into a separate section of code, since Section 469 has been subject to recent litigation.
3. **Appeal Timing – During the Annual Filing Period or After an Audit.** Ordinarily, a taxpayer who does not file an appeal application within the prescribed annual filing period from July 2 through September 15 for a particular tax year is thereafter precluded from appealing the value of their property for that year. Notwithstanding this general provision, appeals are permitted for certain prior tax years after a mandatory audit, if the audit discovers property subject to an escape assessment. For instance, if a business taxpayer does not file an appeal on its 1998-1999 assessed value between July 2, 1998 and September 15, 1998, the assessed value of its property for the 1998-99 tax year is generally final for that year and the taxpayer may not later challenge the value determined. However, if a mandatory audit of the taxpayer's property for the 1998-99 tax year is completed in 2001 and the audit discovers property subject to an escape assessment for the 1998-99 tax year, then in 2001, the business could appeal the original assessment of all property at the location for the 1998-99 tax year. Of course, generally it would be in the best interest of a business to file an appeal in 1998 if it disagreed with the value set by the assessor.
4. **What is the difference in appeal rights?** A taxpayer subject to a nonmandatory audit (generally smaller businesses) may appeal only the value of the property subject to escape assessment. A taxpayer subject to a mandatory audit (generally larger businesses) may appeal the original assessment of all the property at the location of the business, trade or profession in addition to the specific property subject to escape assessment. For instance, if a nonmandatory audit disclosed that a particular piece of equipment was not assessed, the small business owner could only challenge the value of the specific piece of equipment as determined by the

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escape assessment. Conversely, a large business owner subject to a mandatory audit could appeal the original assessment of the land, building, and/or personal property in addition to the escape assessment of the particular piece of equipment.

5. **What is the rationale for permitting a taxpayer to appeal all the property rather than just the property subject to an escape assessment?** The purpose of opening the original assessment of the entire property to appeal is to protect taxpayers from misallocation of value within the total assessment. When an entire property is originally assessed, a taxpayer may agree with the value determined by the assessor for the entire property but may disagree with the allocation of the value among real and personal property. As a result, the taxpayer does not appeal the overall assessment, even though some components are overvalued and some undervalued. Years later, after an audit, the assessor could propose an escape assessment for the undervalued component but leave the overvalued component unchanged. By permitting the taxpayer to appeal the original assessment of all the property at the location, the county assessment appeals board has the power of oversight to ensure that the entire assessment (the original assessment and the escape assessment) is correct.
6. **There appears to be no supportable reason why larger businesses should have greater appeal rights than small business owners.** This bill would afford all taxpayers the same rights regardless of size.
7. **Supporters of equal appeal rights have noted that the disparity could create an incentive for an assessor to manipulate “nonmandatory audits” of larger businesses.** Specifically, it is stated that by limiting the application of the equalization provisions to mandatory audits, an assessor could perform a superficial mandatory audit with a no change result and later conduct a nonmandatory audit that discloses property subject to escape assessment. In that event, the taxpayer would have the right to appeal only the property for which an escape assessment has been made.
8. **Potential opponents of this measure dislike current law, and therefore oppose any expansion of it.** Such persons state that the ability to appeal after an audit is used by some taxpayers as a mechanism to attempt to receive retroactive reductions in value when the taxpayer had otherwise failed to file a timely appeal at the time the original assessment was made. Additionally, they believe that taxpayers should not be allowed the opportunity to appeal the value of all the property; rather they believe appeal rights should be limited to the value of the escaped property.

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Assessment Appeal Filing Date

ANALYSIS

Current Law

Under existing Revenue and Taxation Code Section 1603, a taxpayer must file an assessment appeal application between July 2 and September 15 to appeal the assessed value of real property for property tax purposes.

Revenue and Taxation Code 619 generally requires the assessor to notify taxpayers of changes in the assessed values of their property by July 1, the date that the assessment roll must be completed.¹ However, a notice is not required when the only value change is the application of the annual 2% inflation factor.

Proposed Law

This bill would amend Section 1603 of the Revenue and Taxation Code to extend the final date to file an assessment appeal application for real property to November 30th if the county assessor does not send a notice of the property's assessed value to the taxpayer by August 1.

Background

Previous legislative attempts to extend the filing deadline for assessment appeals are summarized in the following table:

Bill	Year	Author	Sponsor
SB 2169	2000	SR&T Committee	Board of Equalization
SB 657	1995	Maddy	California Taxpayers' Association
AB 614	1993	Rainey	Contra Costa County Assessor
SB 1795	1992	Johnson	Author

These bills previously failed primarily due to opposition from either the California Assessors' Association or individual county assessors.

COMMENTS

1. **Purpose.** This provision would provide taxpayers with a realistic opportunity to appeal their assessed value once they receive some form of communication from the county as to the value determined by the assessor, either by a value notice or the tax bill, as the case may be.
2. **Amendment.** The April 26 amendment changes the date by which value notices must be sent, from September 1 to August 1, in order to maintain the current September 15th countywide assessment appeal deadline. This change was made at

¹ Assessors may receive a 30 day extension period to complete the assessment roll pursuant to Revenue and Taxation Code 155.

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the request of Santa Clara County to ensure taxpayers would have sufficient notice before the end of the appeals period. Without the amendment, if the county sent notices on September 1, taxpayers would have had only 15 days after value notification to file their appeal.

3. **Tax Bills Arrive After Appeal Filing Period Has Ended.** Annual property tax bills must be mailed before November 1. The taxes are payable in two equal installments, with the first installment due November 1 and delinquent on December 10. (§§2610.5, 2704)
 4. **Taxpayers Often Express Outrage and Disbelief.** The fact that the bill arrives in the mail only after the period to challenge the assessment has passed confounds many taxpayers. They often express their belief that the system has been designed to prevent them from exercising their right to appeal.
 5. **The Appeals Filing Period was Designed for Pre-Proposition 13 Times.** The appeals filing period was not adjusted after Proposition 13. The July 2nd to September 15th appeals filing period worked well prior to Proposition 13 when property was cyclically reappraised to current market value and assessors were required to notify taxpayers of increases in their assessed value prior to July 1.
 6. **Annual Assessed Value Notices.** The law still generally requires the assessor to notify taxpayers of increases in assessed value prior to July 1, but the requirement to send a notice is waived when the only change in assessed value is the application of the annual 2% inflation adjustment pursuant to the provisions of Proposition 13. Since the majority of properties fall into this category, most taxpayers do not receive a notice of the current assessed value of their property until the tax bill arrives at the end of October.
 7. **Presumably Annual Notices were Deemed Unnecessary Post-Proposition 13.** With Proposition 13, absent any change to the property, a taxpayer could expect that the assessed value would not increase by more than two percent and could independently estimate the value for the next tax year. However this line of reasoning also assumes that taxpayers would remember the annual appeals filing period, as well as remember the assessed value for the prior year, without any prompting.
 8. **Currently Only Five Counties Still Send Value Notices to All Taxpayers.** The five counties are Alameda, Orange, San Luis Obispo, Santa Clara, and Sutter. Counties that send value notices generally believe that the assessment appeal date should not be extended in their case. Counties that do not send notices generally state that they do not send value notices to all taxpayers because it is too costly.
 9. **Creates Lack of Statewide Uniformity.** This measure would create a lack of statewide uniformity in assessment appeal filing periods between counties that send value notices and those that do not. This reflects a compromise in order to remove the opposition of some county assessors who would otherwise oppose the filing
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date extension. While a lack of uniformity is undesirable, it is necessary so that the greatest number of taxpayers who own property in counties that do not send an annual value notice are provided with value information prior to the deadline to challenge their assessment.

10. **Local Option.** Any county can decide to send value notices if they do not wish to extend the final filing deadline in their county.
11. **The Appeals Period Extension is Limited to Real Property.** This was done at the request of the Assessors' Association because taxes on unsecured personal property assessments are due on August 31.

COST ESTIMATE

With respect to property taxes, the Board would incur some minor absorbable costs in revising forms, amending Property Tax Rules and updating Assessors' Handbooks and the Assessment Appeals Manual.

REVENUE ESTIMATE

Appeal After Audit. Any revenue impact would stem from additional assessment appeals that could be filed on property other than the actual property subject to escape assessment. Appeals boards can increase, decrease, or maintain the value determined by the assessor. Thus, any loss or gain would be associated with the assessment appeals boards setting a value different than that established by the assessor. There is no measurable standard upon which to base an estimate of the outcome of assessment appeals decisions.

Assessment Appeals Filing Period. Any revenue impact from this bill would stem from those additional assessment appeals that would be filed by persons who would have otherwise been barred because they missed the final filing deadline. Appeals boards can increase, decrease, or maintain the value set by the assessor. Thus, any loss or gain would be associated with the assessment appeals boards setting a value different than that established by the assessor. There is no measurable standard upon which to base an estimate of the outcome of assessment appeals decisions.

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